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IN THE

Supreme Court of the United States

OCTOBER TERM, 1972

No. 72-177

HOWARD STATON MILLER,

Petitioner,

—v.—

A. E. SLAYTON, JR., Superintendent of the Virginia State Penitentiary,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

REPLY BRIEF OF PETITIONER

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Pursuant to Rule 24(4) of the Rules of this Court, petitioner files this reply to the respondent's brief in opposition to the granting of a writ of certiorari.

Petitioner seeks a writ of certiorari to review one question only. Is he entitled to a hearing on whether conflicts of interest between himself and his codefendants made it unconstitutional to order joint representation for them?

In his brief, the respondent agrees that this is the sole question on review (R. Br. 2). Inexplicably, however, respondent argues against granting the writ on the grounds that *Bruton* v. *United States*, 391 U.S. 123 (1968), was correctly applied below and that any error in admitting evidence at trial was harmless (R. Br. 6). The relevance of

these arguments to the conflict of interest question tendered by petitioner is at best puzzling, and the source of respondent's confusion is unclear. The petitioner relied on *Bruton* in the court below essentially for the proposition that it was a violation of his Sixth Amendment right of confrontation for the trial judge to rely on a nontestifying codefendant's confession to convict the petitioner. *Bruton* v. *United States,* 391 U.S. at 127-28. In the petition for certiorari, *Bruton* was cited simply to illustrate one of the several issues on which the petitioner was handicapped by the joint representation.

The central issues raised by this petition are plain, and the respondent's failure to address them should not mask their seriousness. Miller's interests conflicted with those of his codefendants at every turn—during the juvenile hearings, during the pretrial phase, during trial and at sentencing. Yet, the trial judge made no effort to protect Miller, or even to warn him, but relied solely on an unsubstantiated representation of the court-appointed lawyer. This Court should determine whether indigents can still be required to accept unconstitutional joint representation just because their lawyer fails to complain.

CONCLUSION

For the reasons set forth above, the petition for certiorari should be granted.

Respectfully submitted,

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